

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

WILLIAM ANTHONY COLÓN,

Plaintiff

v.

RUBÉN BLADES, ROBERTO
MORGALO, MARTÍNEZ, MORGALO &
ASSOCIATES.

Defendants

CIVIL 07-1380 (JA)

RUBÉN BLADES,

Cross-Plaintiff

Y.

ROBERT MORGALO, in his personal capacity and as owner and member of MARTÍNEZ, MORGALO & ASSOCIATES, LLC; MARTÍNEZ, MORGALO & ASSOCIATES, LLC,

Cross-Defendants

OPINION AND ORDER

The matter before me is cross-plaintiff Rubén Blades' cross-motion for summary judgment against Robert Morgalo filed July 13, 2010. (Docket No. 234.) The cross-plaintiff seeks summary judgment as to the first cause of action in his

1 CIVIL 07-1380 (JA)

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3 amended claim. For the reasons set forth below, cross-plaintiff's motion is
4 DENIED.

5 PROCEDURAL BACKGROUND

6 Cross-plaintiff Blades moves for summary judgment pursuant to Federal
7 Rules of Civil Procedure 56. (Docket No. 234.) Blades filed an amended cross-
8 claim against Robert Morgalo and Martínez, Morgalo and Associates, LLC, on July
9 29, 2008. (Docket No. 56.) Among other claims, Blades alleged that Morgalo,
10 both in his individual and official capacities, breached their contract and his
11 fiduciary duty to Blades. (*Id.* at ¶¶ 30-37.) Blades sought compensatory
12 damages in the sum of \$143,000. On March 1, 2010, Blades filed a motion for
13 default judgment. (Docket No. 133.) On June 15, 2010, I entered an opinion and
14 order granting this motion against Martínez, Morgalo & Associates, awarding
15 damages in the amount of \$133,168.16. Colón v. Blades, 717 F. Supp. 2d 175,
16 187 (D.P.R. 2010). In the present motion, Blades seeks summary judgment
17 against Morgalo in his individual capacity, citing the same breach of contract and
18 breach of fiduciary duty. (Docket No. 234.) Blades also filed a memorandum of
19 law. (Docket No. 234-1.)

20 DISCUSSION

21 Cross-plaintiff Rubén Blades seeks summary judgment on count one of his
22 amended complaint against cross-defendant Robert Morgalo, alleging breach of

1 CIVIL 07-1380 (JA)

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4 contract and fiduciary duty. (Docket No. 56, at ¶ 30-37.) The cross-plaintiff
5 seeks redress from cross-defendant Morgalo in his individual capacity as owner
6 and member of Martínez Morgalo & Associates ("MM&A"). He argues that I should
7 pierce MM&A's corporate shield and hold Morgalo jointly and severally liable for
8 damages and fees. (Docket No. 56, at ¶ 37.)

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10 Blades submits that cross-defendant Morgalo is but an alter ego of MM&A.
11 (Docket No. 234-1, at 12-13.) In support, he draws from Morgalo's deposition,
12 illustrating his belief that Morgalo did not observe corporate formalities. Among
13 the passages selected:
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15 basically, Arturo and I are the two (2) shareholders, and
16 we sit in the same office every single day. And we are
17 talking every day. And we are discussing, um, the
18 business every day. [...] There was no need for a
19 stipulated date of board meetings, when we had meetings
every single day.

20 [Dep. Morgalo at 37:1-6]
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22 At whatever time that we discussed anything

23 [Dep. Morgalo at 37:9-10]

24 We had a great ... This system is ... Okay? Is, like, I'd
25 call to Arturo and say "hey, man, we need to sit down
26 and talk" "What's good for you?" "Oh, right now". I'd
27 say "okay". Boom, there you go. It's a very, very ... It's
not too complicated but it's very effective."

28 [Dep. Morgalo at 38:2-6]
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(Docket No. 234-1, at 13.)

1 CIVIL 07-1380 (JA)

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4 Cross-plaintiff concludes by stating “[a]ll of [the] factors [in deciding
5 whether to disregard corporate formality] are present here, especially Morgalo’s
6 control of corporate affairs, undercapitalization of MM&A by the end of 2002,
7 nonobservance of corporate formalities, personal guarantees of Morgalo for
8 obligations of MM&A (loans) and management of the corporation without regard
9 to its independent existence.” (Docket 234-1, at 14.)
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12 Under Puerto Rico law there is a presumption that a corporate entity is
13 separate from its controlling entity. Milán v. Centennial Commc’ns Corp., 500 F.
14 Supp. 2d 14, 26 (D.P.R. 2007) (quoting Fleming v. Toa Alta Dev. Corp., 96 D.P.R.
15 240, 243 (1968)). “Corporate directors, officers, and shareholders are generally
16 not liable for the debts of the corporation.” Wadsworth, Inc. v. Schwarz-Nin, 951
17 F. Supp. 314, 322 (D.P.R. 1996). “As a rule, this shield will almost never be
18 dismantled.” Id. This distinctness can be erased however, through piercing the
19 corporate veil. “Where the directors or officers use the corporation to commit
20 fraud, courts will “pierce the corporate veil” and hold those officers or directors
21 personally liable.” Id. at 322 (citing South Porto Rico Sugar Corp. v. Junta
22 Azucarera, 88 D.P.R. 43 (1963)).
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25 This court has listed several factors in deciding whether to pierce the
26 corporate veil. Factors frequently considered “are undercapitalization,
27 nonpayment of dividends, nonfunctioning officers and directors, failure to observe
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1 CIVIL 07-1380 (JA)

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3 corporate formalities, absence of corporate records, commingling of funds, and
4 use of corporate funds for non-corporate purposes." United States v. JG-24, Inc.,
5 331 F. Supp. 2d 14, 63 (D.P.R. 2004) (citing Satellite Broad. Cable v. Telefónica
6 de España, 786 F. Supp. 1089, 1102 (D.P.R. 1992)). The First Circuit has listed
7 additional factors of corporate insolvency at the time of litigation, the use of the
8 corporation in committing fraud, and the siphoning of corporate funds by the
9 dominant shareholders. Pepsi-Cola Metro. Bottling Co. v. Checkers, Inc., 754 F.2d
10 10, 14-16 (1st Cir. 1985).

14 There is no evidence that Morgalo committed fraud. A defendant must
15 allege and subsequently prove a set of facts sufficient to warrant the pierce. See,
16 e.g., Mitsubishi Caterpillar Forklift Am., Inc. v. Superior Serv. Assocs. Inc., 81 F.
17 Supp. 2d 101, 112-13 (D. Me. 1999). Cross-plaintiff submits no proof of fraud
18 before this court; rather, he summarily draws this conclusion from a single
19 deposition. Further reading of Morgalo's deposition reveals that, quite the
20 opposite, MM&A *did* keep many of the corporate formalities. MM&A held annual
21 shareholders meetings (Docket No. 234-5, at 38-39, Morgalo's deposition), held
22 business meetings exclusively at the office (id. at 38), kept business and personal
23 taxes separate (id. at 40), had independent companies keep their books (id.), and
24 issued shares of stock. (Id. at 41.) Cross-plaintiff fails to point this court to
25 anywhere in the record with evidence that MM&A or Morgalo committed fraud. "A
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1 CIVIL 07-1380 (JA)

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4 plaintiff hoping to persuade a court to pierce the corporate veil must establish that
5 the directors acted with intent to defraud and that the creditor cannot collect from
6 the corporate the debt owed them." Wadsworth, Inc. v. Schwarz-Nin, 951 F.
7 Supp. at 322. Indeed, even "[o]ne-person corporations are authorized by law and
8 should not lightly be labeled sham." Nelson v. Adams USA, Inc., 529 U.S. 460,
9 471 (2000).

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11 In order to grant a motion for summary judgment, a genuine issue must not
12 exist. "In this context, 'genuine' means that the evidence about the fact is such
13 that a reasonable jury could resolve the point in favor of the nonmoving party
14" Burke v. Town of Walpole, 405 F.3d 66, 75 (1st Cir. 2005). "[A]ll
15 justifiable inferences are to be drawn in [the non-movant's] favor." Anderson v.
16 Liberty Lobby, Inc., 477 U.S. 242, 255 (1986) (citing Adickes v. S.H. Kress & Co.,
17 398 U.S. 144, 158-59 (1970)). Cross-plaintiff fails to remove any doubt that no
18 genuine issue of fact exists as to fraud perpetrated by the cross-defendant. As
19 such, I cannot grant the cross-plaintiff's motion for summary judgment.

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21 JOINT AND SEVERAL LIABILITY

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23 The cross-plaintiff also moves that cross-defendant Morgalo be joint and
24 severally liable for the debts owed to Rubén Blades Productions. This claim is
25 without merit. As discussed above, I cannot pierce MM&A's corporate veil and find
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1 CIVIL 07-1380 (JA)

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4 Morgalo personally liable for its debts. As such, Morgalo will not be held joint and
5 severally liable.

6 At San Juan, Puerto Rico, this 28th day of December, 2010.
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8 S/ JUSTO ARENAS
9 Chief United States Magistrate Judge
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